

Senate Bill No. 71

Passed the Senate July 7, 2005

Secretary of the Senate

Passed the Assembly July 7, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 2932.2 to the Fish and Game Code, to add Sections 25363.5 and 25404.9 to the Health and Safety Code, to amend Section 2795 of, and to add Section 6217.8 to, the Public Resources Code, to add Section 384.1 to the Public Utilities Code, to amend Section 1259.4 of the Water Code, and to amend Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session, relating to resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 71, Committee on Budget and Fiscal Review. Resources.

(1) Existing law establishes the Salton Sea Restoration Fund administered by the Director of Fish and Game for purposes related to restoring the Salton Sea. Existing law also provides for the continuous appropriation of \$140,000,000 from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002 to the Wildlife Conservation Board, for expenditure by the board and for grants, for the acquisition from willing sellers of land and water resources to protect regional water quality, to protect and enhance fish and wildlife habitat, and to assist local agencies in improving regional water supply reliability.

This bill would require that \$12,000,000 be made available from that continuously appropriated fund for transfer or direct expenditure for acquisition, grants, or other activities that directly restore the Salton Sea and its transboundary watersheds.

(2) The existing Carpenter-Presley-Tanner Hazardous Substance Account Act imposes liability for hazardous substance removal or remedial actions and requires that the costs incurred by the Department of Toxic Substances Control to carry out the act be recoverable from the liable person. The act also defines the term "liable person," for purposes of that act, with reference to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Existing law provides that the standard of liability for the recovery of those costs or expenses is strict liability and provides

that an indemnification or other agreement is not effective to transfer liability. Existing law also provides for the apportionment of costs and expenditures under the act and allows a person who has incurred removal or remedial action costs to seek indemnity or contribution from other liable persons.

This bill would provide that the costs incurred by a state agency to take a hazardous substance response action at the BKK Landfills Site in West Covina would be deemed to be a contribution towards any potential liability for response costs or damage imposed pursuant to the state law upon a state agency that arranged for the disposal or treatment of a hazardous substance at that site. The bill would also declare the intent of the Legislature that those costs be deemed to be a contribution towards any potential liability under CERCLA.

(3) Existing law requires the Secretary for Environmental Protection to adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program, and every county is required to apply to the secretary to be certified to implement the unified program as a Certified Unified Program Agency (CUPA). Existing law requires the secretary, if no local agency has been certified in a county by January 1, 2000, to determine the methods by which the unified program shall be implemented and to select any combination of specified implementation methods. Existing law requires the secretary to establish the amount of the fee to be paid when the unified program agency is a state agency.

This bill would establish the State Certified Unified Program Agency Account (SCUPA Account) in the General Fund and would require the SCUPA Account to be administered by the Department of Toxic Substances Control. The bill would require the fees specified above and other funds and civil, criminal, and administrative penalties to be deposited into the SCUPA Account. The bill would authorize the department to expend the funds in the SCUPA Account, upon appropriation by the Legislature, to implement the unified program in those counties for which the secretary has designated the department as a CUPA.

(4) Existing law, the Surface Mining and Reclamation Act of 1975, governs surface mining operations and reclamation of mined lands. Existing law requires the first \$2,000,000 of certain moneys from mining activities on federal lands disbursed by the United States each fiscal year to be deposited in the Surface Mining and Reclamation Account in the General Fund, which account is authorized to be expended, upon appropriation by the Legislature, for purposes of that act. Existing law also allows only the first \$1,100,000 of that money to be deposited in the account, if the amount of that money disbursed by the United States to the state is less than \$20,000,000.

This bill would delete the prohibition limiting the deposit of that money in the account to \$1,100,000 when the amount of money disbursed is less than \$20,000,000.

(5) Existing law provides for the distribution of oil and gas revenues from tide and submerged lands granted to the City of Long Beach between the city and the state.

This bill would prohibit the City of Long Beach from retaining out of oil revenue any money for deposit in a reserve fund to be used for future tidelands oil administrative costs or future costs related to the extraction or disposition of oil or other hydrocarbons, including, but not limited to, future costs for the plugging and abandonment of wells and removal of production facilities, even if the future costs are certain to occur and can reasonably be estimated.

The bill would establish the Oil Trust Fund (fund) in the State Treasury and would appropriate the money in the fund to the commission commencing when specified requirements are met. The bill would require the City of Long Beach, on or before March 1, 2006, to pay to the State Lands Commission as remaining oil revenue from the Long Beach tidelands free from the public trust for commerce, navigation, and fisheries, all money, including both principal and interest, in a specified abandonment reserve fund that the city created in 1999.

The bill would require the Controller to transfer these moneys to the fund. The bill would also require the Controller to transfer additional prescribed amounts to the fund and to the General Fund. The bill would require the commission to expend the money in the fund to finance the costs of well abandonment, pipeline removal, facility removal, remediation, and other costs

associated with removal of oil gas facilities from the Long Beach tidelands.

The bill would require the commission, by January 1, 2007, to submit a specified report to the Director of Finance and specified legislators regarding tidelands oil field mitigation.

(6) Under the Public Utilities Act, the Public Utilities Commission (commission) requires electrical corporations to identify a separate rate component to fund cost-effective energy efficiency and conservation activities, public interest research and development, and development of renewable resources technology. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to support each of these programs. Existing law also requires the State Energy Resources Conservation and Development Commission (Energy Commission) to transfer funds collected for these programs to specified funds, including requiring that funds transferred to the Energy Commission for purposes of public interest research, development, and demonstration be transferred to the Public Interest Research, Development, and Demonstration Fund in the State Treasury. Existing law requires the Energy Commission to develop, implement, and administer the Public Interest Research, Development, and Demonstration Program.

This bill would require the Energy Commission, on or before March 15, 2006, to prepare and submit to the appropriate policy and fiscal committees of the Legislature, a report setting forth a long-term research priority, program management, and staffing plan for the Public Interest Energy Research Program that is part of the Public Interest Research, Development, and Demonstration Program.

(7) Existing law requires the State Water Resources Control Board (board), on or before January 1, 2007, to adopt principles and guidelines for maintaining instream flows in certain coastal streams in accordance with state policy for water quality control, and authorizes the board to adopt principles and guidelines for maintaining other instream flows in accordance with that state policy.

This bill, instead, would require the board, on or before January 1, 2008, to adopt principles and guidelines for

maintaining instream flows in certain coastal streams as part of that state policy, and would authorize the board to adopt principles and guidelines for maintaining other instream flows as part of that state policy.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 2932.2 is added to the Fish and Game Code, to read:

2932.2. Of the funds appropriated pursuant to Section 79565 of the Water Code, not less than twelve million dollars (\$12,000,000) shall be made available for transfer or direct expenditure for acquisition, grants, or other activities that directly restore the Salton Sea and its transboundary watersheds, consistent with Section 2932.

SEC. 2. Section 25363.5 is added to the Health and Safety Code, to read:

25363.5. (a) Notwithstanding any other provision of this article, the costs incurred by a state agency to take a hazardous substance response action at the BKK Landfills Site in West Covina shall be deemed to be a contribution towards any potential liability for response costs or damages imposed pursuant to state law upon a state agency that arranged for the disposal or treatment of a hazardous substance at that site.

(b) The Legislature declares its intent that the costs incurred by a state agency to take action in response to a hazardous substance release at the BKK Landfills Site in West Covina shall be deemed to be a contribution towards any potential liability for response costs or damages imposed pursuant to the federal act upon a state agency that arranged for the disposal or treatment of a hazardous substance at that site.

SEC. 3. Section 25404.9 is added to the Health and Safety Code, to read:

25404.9. (a) The State Certified Unified Program Agency Account (SCUPA Account) is hereby established in the General Fund and shall be administered by the department. In addition to any other money that may be appropriated by the Legislature to

the SCUPA Account, all of the following funds shall be deposited in the SCUPA Account:

(1) The fees collected pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 25404.5.

(2) All reimbursements received for costs of enforcement actions taken by the department acting as a CUPA pursuant to this chapter.

(3) Funds received for the counties in which the department acts as a CUPA from the Rural CUPA Reimbursement Account established pursuant to subdivision (c) of Section 25404.8.

(4) Civil and criminal penalties collected pursuant to paragraph (3) of subdivision (a) of Section 25192, as appropriate.

(5) Administrative penalties collected pursuant to subdivision (i) of Section 25404.1.1, as appropriate.

(6) All interest earned upon money deposited in the SCUPA Account.

(b) The funds deposited in the SCUPA Account may be expended by the department, upon appropriation by the Legislature, for the department's costs of implementing the unified program in those counties for which the secretary has designated the department as a CUPA pursuant to paragraph (2) of subdivision (f) of Section 25404.3.

SEC. 4. Section 2795 of the Public Resources Code is amended to read:

2795. (a) Notwithstanding any other provision of law, the first two million dollars (\$2,000,000) of moneys from mining activities on federal lands disbursed by the United States each fiscal year to this state pursuant to Section 35 of the Mineral Lands Leasing Act, as amended (30 U.S.C. Sec. 191), shall be deposited in the Surface Mining and Reclamation Account in the General Fund, which account is hereby created, and may be expended, upon appropriation by the Legislature, for purposes of this chapter.

(b) Proposed expenditures from the account shall be included in a separate item in the Budget Bill for each fiscal year for consideration by the Legislature. Each appropriation from the account shall be subject to all of the limitations contained in the Budget Act and to all other fiscal procedures prescribed by law with respect to the expenditure of state funds.

SEC. 5. Section 6217.8 is added to the Public Resources Code, to read:

6217.8. (a) For purposes of this section “fund” means the Oil Trust Fund established pursuant to subdivision (b).

(b) The Oil Trust Fund is hereby established in the State Treasury and the moneys in the fund are hereby appropriated to the commission in accordance with this section.

(c) (1) On or before March 1, 2006, the City of Long Beach shall pay to the State Lands Commission as remaining oil revenue from the Long Beach tidelands free from the public trust for commerce, navigation, and fisheries, all money, including both principal and interest, in the abandonment reserve fund that the city created in 1999 and that was the subject of the litigation in *State of California ex rel. California State Lands Commission v. City of Long Beach* (2005) 125 Cal.App.4th 767.

(2) (b) The Controller shall deposit in the fund any funds paid to the Commission pursuant to paragraph (1).

(3) Except as provided in paragraph (4), on the last day of each month beginning July 31, 2006, the Controller shall transfer to the fund the amount of two million dollars (\$2,000,000) or 50 percent of remaining oil revenue, as described in subdivision (d) of Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session to the Oil Trust Fund, whichever is less.

(4) Beginning July 1, 2005, and ending December 31, 2005, any contributions to the fund shall be suspended, except those funds described in paragraphs (1) and (2). During that period the Controller shall transfer four million dollars (\$4,000,000) monthly to the General Fund from oil revenues, as described in subdivision (d) of Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session.

(5) Beginning January 1, 2006, and ending June 30, 2006, the amount contributed to the fund shall be the amount specified in paragraph (3). During that period the Controller shall also transfer two million dollars (\$2,000,000) monthly to the General Fund from oil revenues, as described in subdivision (d) of Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session.

(d) (1) The total amount deposited in the fund shall not exceed three hundred million dollars (\$300,000,000), The

commission may adjust this limit to ensure that there will be adequate money in the fund.

(2) All interest earned on the money in the abandonment reserve fund specified in paragraph (1) of subdivision (c) shall be transferred to the fund.

(3) The commission may expend the money from the fund solely to finance the costs of well abandonment, pipeline removal, facility removal, remediation, and other costs associated with removal of oil and gas facilities from the Long Beach tidelands that are not the contractual responsibility of the contractor or other parties.

(e) The moneys deposited in the fund are hereby appropriated to the commission commencing when all of the following conditions are met:

(1) The City of Long Beach adopts an ordinance declaring that the tidelands oil fields have been abandoned and mitigation for environmental damage can begin.

(2) The City of Long Beach transmits to the commission a copy of the ordinance and all necessary accompanying documentation, including a plan for expenditures for mitigation.

(3) The commission reviews the material provided in paragraph (2) and notifies the Controller that the fields have been abandoned and mitigation can begin. The commission shall provide a schedule for expenditures.

(f) On or before January 1, 2007, the commission shall report to the Director of Finance and the chairpersons of the appropriate legislative committees on both the following:

(1) A forecast of when the tidelands oil fields will be abandoned and require environmental mitigation.

(2) An estimate of the likely costs to mitigate the effects of extraction in the tidelands oil fields.

SEC. 6. Section 384.1 is added to the Public Utilities Code, to read:

384.1. (a) For purposes of this section, “Energy Commission” means the State Energy Resources Conservation and Development Commission.

(b) On or before March 15, 2006, the Energy Commission shall prepare and submit to the appropriate policy and fiscal committees of the Legislature, a report setting forth a long-term research priority, program management, and staffing plan for the

Public Interest Energy Research Program, that is part of the Public Interest Research, Development, and Demonstration Program established pursuant to Section 25620.1 of the Public Resources Code and funded through the Public Interest Research, Development, and Demonstration Fund. The report shall do all of the following:

(1) Designate, in priority order, between 5 and 10 areas of research.

(2) Evaluate the current and projected funding and workload through 2011.

(3) Identify, based on the priorities established by the Energy Commission, an effective and efficient program management structure, staffing, and funding requirements to adequately manage the projected workload.

(4) Consider the appropriate mix of contract consultants and state employees, considering required technical expertise and overall costs.

(c) The evaluation shall consider the manageability of an increasing number of projects and whether the number of projects should be limited, which areas of research have proven most productive, and structural changes to provide a greater degree of operational independence and research leadership to address the long-term problems identified by the Independent Review Panel in its March 2004 report.

(d) The report required by this section may be included in the five-year investment plan report required by subdivision (b) of Section 399.7, if provided to the appropriate policy and fiscal committees of the Legislature by March 15, 2006.

SEC. 7. Section 1259.4 of the Water Code is amended to read:

1259.4. (a) (1) On or before January 1, 2008, the board shall adopt principles and guidelines for maintaining instream flows in coastal streams from the Mattole River to San Francisco and in coastal streams entering northern San Pablo Bay, as part of state policy for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7, for the purposes of water right administration.

(2) The board may adopt principles and guidelines for maintaining instream flows not described in paragraph (1), as part of state policy for water quality control adopted pursuant to

Article 3 (commencing with Section 13140) of Chapter 3 of Division 7, for the purposes of water right administration.

(b) Prior to the adoption of principles and guidelines pursuant to subdivision (a), the board may consider the 2002 “Guidelines for Maintaining Instream Flows to Protect Fisheries Resources Downstream of Water Diversions in Mid-California Coastal Streams” for the purposes of water right administration.

SEC. 8. Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session, as amended by Section 1 of Chapter 246, of the Statutes of 1982, is amended to read:

Sec. 4. (a) Until and including the last day of the calendar month in which this act becomes effective, the City of Long Beach shall account for and pay over to the state oil revenue and dry gas revenue in accordance with all the provisions of Chapter 29 of the Statutes of 1956, First Extraordinary Session, as amended by Chapter 1398 of the Statutes of 1963.

(b) Commencing on the first day of the calendar month following the date on which this act becomes effective, the City of Long Beach shall account for and pay over monthly to the state oil revenue and dry gas revenue free from the public trust for navigation, commerce, and fisheries and from the uses, trusts, conditions and restrictions that were imposed by the acts of 1911, 1925, and 1935, and the city shall retain, subject to the provisions of this act, the amounts or percentages of oil revenue hereinafter provided.

(c) The City of Long Beach shall account for and pay over monthly to the State Lands Commission for and on behalf of the state all dry gas revenue thereafter received by the city.

(d) The City of Long Beach shall retain out of oil revenue each month an amount equal to all subsidence costs thereafter expended by the city and an amount equal to the money thereafter expended by the city in administering oil and gas operations on the Long Beach tidelands, to the extent, if any, that the amount is not deductible under subdivision (b) of Section 1. The city shall not retain out of oil revenue any money for deposit in a reserve fund to be used for future tidelands oil field administrative costs or future costs related to the extraction or disposition of oil or other hydrocarbons, including, but not limited to, future costs for the plugging and abandonment of wells and removal of production facilities, even if the future costs

are certain to occur and can reasonably be estimated. The city shall pay out of oil revenue to the State Lands Commission for and on behalf of the state each month an amount equal to the money thereafter expended by the state, as determined by the Director of Finance, in administering this act and Chapter 29 of the Statutes of 1956, First Extraordinary Session, including the costs of the audits by the Auditor General pursuant to Section 10, insofar as that amount pertains to the Long Beach tidelands. The oil revenue remaining after deducting and paying these amounts shall hereafter be referred to as "remaining oil revenue."

(e) All advance payments attributable to the undeveloped portion of the Long Beach tidelands shall be divided equally between the City of Long Beach and the state. The City of Long Beach shall account for and pay over monthly to the State Lands Commission for and on behalf of the state all other remaining oil revenue, except for the percentages or amounts of remaining oil revenue specified in the following schedule, which percentages or amounts shall be retained by the City of Long Beach:

- (1) Until and including December 31, 1967, 50 percent.
- (2) During the calendar year 1968, 45 percent or the total amount of nine million dollars (\$9,000,000) during that year, whichever is less.
- (3) During the calendar year 1969, 40 percent or the total amount of nine million dollars (\$9,000,000) during that year, whichever is less.
- (4) During the calendar year 1970, 35 percent or the total amount of nine million dollars (\$9,000,000) during that year, whichever is less.
- (5) During the calendar year 1971, 30 percent or the total amount of nine million dollars (\$9,000,000) during that year, whichever is less.
- (6) During the calendar year 1972, 25 percent or the total amount of nine million dollars (\$9,000,000) during that year, whichever is less.
- (7) During the calendar year 1973, and during each calendar year thereafter, to and including 1979, 20 percent or the total amount of nine million dollars (\$9,000,000) during each year, whichever is less.
- (8) During the calendar year 1980, and during each calendar year thereafter, to and including 1982, 20 percent or the total

amount of eight million dollars (\$8,000,000) during each year, whichever is less.

(9) During the calendar year 1983, 20 percent or the total amount of seven million dollars (\$7,000,000) during that year, whichever is less.

(10) During the calendar year 1984, 20 percent or the total amount of six million dollars (\$6,000,000) during that year, whichever is less.

(11) During the calendar year 1985, 20 percent or the total amount of five million dollars (\$5,000,000) during that year, whichever is less.

(12) During the calendar year 1986, 20 percent or the total amount of four million five hundred thousand dollars (\$4,500,000) during that year, whichever is less.

(13) During the calendar year 1987, 20 percent or the total amount of three million four hundred thousand dollars (\$3,400,000) during that year, whichever is less.

(14) During the calendar year 1988, and each calendar year thereafter, the total sum of one million dollars (\$1,000,000) during each year.

If the execution of the contractors' agreement is delayed beyond December 31, 1964, the city shall retain 50 percent of remaining oil revenue, as provided in paragraph (1) of the above schedule, until and including the last day of the third calendar year following the calendar year in which the contractors' agreement is executed, and the amounts or percentages of remaining oil revenues to be retained by the city as specified in paragraphs (2) to (14), inclusive, of the above schedule shall be deferred accordingly. If the total aggregate amount of remaining oil revenue (including advance payments) retained by the city on and after the effective date of this act should reach the sum of two hundred thirty-eight million dollars (\$238,000,000) at any date prior to January 1, 1988, the city shall retain during the next calendar year following the date at which that total aggregate sum is reached, and during each calendar year thereafter, the total sum of one million dollars (\$1,000,000) out of remaining oil revenue during each year, in lieu of any amounts that might otherwise be specified in the above schedule in respect to those years.

(f) The contractors' agreement shall include a provision for a "reserve for subsidence contingencies." This reserve shall accumulate at the rate of two million dollars (\$2,000,000) a year, exclusive of interest thereon, commencing from and after the first day of the second month following termination of the right to receive any advance payment from the field contractor and shall continue for a period of 20 years thereafter. The amounts so accumulated, but not the interest thereon, shall be treated as a cost of oil production under the contractors' agreement and shall be deductible in computing oil revenue.

The amounts so accumulated, together with interest, shall be impounded by the city in a separate fund and shall be invested in bond issued by the state or if those bonds are unavailable, then in securities of the United States. the fund shall be available to indemnify and hold harmless the City of Long Beach, the state, and any and all contractors under the contractors' agreement from claims, judgments, and costs of defense, arising from subsidence alleged to have occurred as a result of operations under the agreement. The fund may also be used for the purpose of paying subsidence costs or for conducting repressuring operations in the event there is no oil revenue or the oil revenue is insufficient to pay these costs.

The fund shall remain impounded until the time that the city and the state shall jointly determine that there is no longer any hazard of those claims or judgments or that there is no potential danger of subsidence, whichever is later. However, if the city and the state are unable to agree upon that joint determination, the State Lands Commission may make application to a court of competent jurisdiction for determination by the court as to whether it is necessary to continue the impoundment of the fund.

Upon termination of that impoundment, the money so impounded, including all interest and earnings thereof, shall be distributed to the city in addition to the amounts specified under subdivision (e), and the state, as follows: an amount equal to 50 percent of all subsidence costs approved and disbursed by the city from the effective date of this act to and including December 31, 1968, shall be distributed and paid to the city; and the balance shall be paid and distributed to the state. Nothing herein contained shall constitute a waiver of sovereign immunity by the state; nor shall anything herein contained affect in any manner

the rights and obligations of the City of Long Beach, the state, or the contractors under the contractors' agreement, or any of them, as against any other person or persons, relative to claims, judgments, or liability arising from subsidence of the land surface.

SEC. 9. For the purposes of Section 384.1 of the Public Utilities Code, the Legislature finds and declares that the Public Interest Energy Research Program provides contracts and grant funds to public and private entities for research, development, and demonstration of electricity-related innovations. The number of projects managed under the Public Interest Energy Research Program has grown from 340 projects in the 2000-01 fiscal year, to more than 700 projected projects for the 2005-06 fiscal year. In a March 2004 report, a legislatively mandated Independent Review Panel recommended that the State Energy Resources Conservation and Development Commission improve its research and development efforts by increasing project management positions. The report found that there remain requirements for additional technical and management staff to adequately select and manage the large and growing project workload.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect public health and safety and the environment, it is necessary that this act take effect immediately.

Approved _____, 2005

Governor